

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS JAMES ROBINSON, JR.,

Defendant-Appellant.

UNPUBLISHED

June 10, 2003

No. 245950

Genesee Circuit Court

LC No. 02-010850-FH

Before: Talbot, P.J., and Neff and Kelly, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by leave granted the trial court's order denying his motion to suppress the gun found on his person by police conducting a *Terry*¹ stop. Defendant was charged with carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission or attempted commission of a felony, MCL 750.227b. We affirm.

I

Sometime around 2:00 a.m. on October 17, 2002, two Flint police officers on patrol responded to a police radio dispatch of a domestic disturbance at 1734 Pennsylvania Avenue, a Flint residence, with a possible gunshot fired inside the home.² The dispatcher stated that a black male, with corn rolls, wearing a black Carhartt jacket, was in possession of a firearm. When the officers arrived, they went to the rear of the house, which was a two-story house with two apartments, and knocked on the door. They heard voices, but no one answered the door. One of the officers remained at the back of the house, while the other went to the front to watch until another unit could arrive to assist. As the officer approached the front of the house, two females came out the front door, followed by a male that matched the dispatch description of the man with a gun. The officer ordered the male, defendant, to place his hands on the wall, and then the officer patted him down, finding a handgun in his coat pocket. The trial court denied defendant's motion to suppress evidence of the gun as the product of an illegal *Terry* stop.

¹ *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

² This general recitation of facts is not limited to the facts elicited at the suppression hearing.

II

Defendant argues that the *Terry* stop was illegal because it was based on an anonymous tip, which, combined with the surrounding circumstances, did not rise to the level of reasonable suspicion required for an investigatory stop. Therefore, the police violated his Fourth Amendment right to be free from unreasonable searches and seizures, and the gun seized during the pat down should be suppressed as fruit of the poisonous tree. We disagree.

A

This Court reviews a trial court's factual findings in a suppression hearing for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); *People v Custer (On Remand)*, 248 Mich App 552, 558; 640 NW2d 576 (2001). However, the constitutional questions relevant to the suppression hearing are questions of law, reviewed de novo. *Id.* at 559.

B

The Fourth Amendment to the United States Constitution and its counterpart in the Michigan Constitution protect against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996). An investigatory stop and frisk for weapons are considered reasonable if a police officer has a reasonable suspicion of possible criminal activity and a reasonable fear for his own or others' safety. *Id.* at 98-99; *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

The reasonableness of an officer's suspicion is determined on a case-by-case basis considering the totality of all the facts and circumstances. *Oliver, supra* at 192, 200; *Muro, supra* at 747. The officer must be able to articulate specific facts, which together with rational inferences from those facts, reasonably warrant the intrusion. *Terry, supra* at 21; *Muro, supra* at 747. In considering the totality of the circumstances, a court must view the circumstances as understood and interpreted by law enforcement officers, applying common sense and everyday life experiences. *Oliver, supra* at 192; *People v Lewis*, 251 Mich App 58, 70; 649 NW2d 792 (2002).

The trial court denied defendant's motion to suppress, concluding that the totality of the circumstances warranted an investigative detention and the patdown. The court rejected defendant's argument that the stop and frisk was premised merely on an unreliable anonymous tip.

The police ... responded to a complaint that a crime was being committed....

A complaint is called into the police. It identifies a location. It identifies the crime. It identifies the firing of a gun. It identifies an individual. It gives a description of an individual. And the police respond to the complaint. The police arrive at the identified residence. Upon arriving, they observe two females exit the building followed by a male. The male fits the description of the complainant, [sic] the description including a black male wearing a Carhard [sic] jacket with corn rolls in his hair. At this point there is sufficient information, viewing the

totality of the circumstances, to warrant an investigative detention. Officer Dye conducts a pat-down search of the defendant and finds a gun.

The court noted that defendant and the two women were leaving the residence where a shooting was alleged to have occurred and that there were exigent circumstances from the standpoint of preserving evidence and the officer's safety.

Defendant does not argue that the court's findings are clearly erroneous. Instead, defendant characterizes the complaint in this case as an "anonymous tip" and then argues that the tip lacked the requisite predictive information to allow the officers to assess its reliability, and therefore the officers had no valid basis for stopping him. We disagree.

We find the cases cited by defendant inapposite. See, e.g., *Florida v JL*, 529 US 266; 120 S Ct 1375; 146 L Ed 2d 254 (2000); *Northrop v Trippett*, 265 F3d 372 (CA 6, 2001). The facts and circumstances do not place this case in the context of an anonymous tip case. Unlike the circumstances in *JL*, this was not a "bare report" by an anonymous caller that someone was carrying a gun.³ *JL*, *supra* at 268, 271. Nor is it a case of an anonymous informant reporting unlawful activity as in *Trippett*, where an anonymous caller informed the police that two men, "one wearing a green 'Used' jean outfit," were selling drugs at a bus station. *Trippett*, *supra* at 375-376.

In this case, the officers were responding to a police radio dispatch of a possible domestic disturbance.⁴ The dispatch indicated that there was a possible shot fired inside the home. The officers had a description of a male involved who had a gun. The officers responded and were in the process of determining the circumstances when Officer Dye was unexpectedly confronted with three persons coming out the front door, including a male matching the dispatch description, who reportedly was armed. Officer Dye testified that he had his weapon drawn as he saw the

³ In *JL*, the police received an anonymous telephone call that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. The police went to the bus stop and saw the defendant wearing a plaid shirt. The police did not see a gun or observe the defendant make any suspicious movements. The police approached the defendant and frisked him, finding a gun. The defendant was charged with carrying a concealed weapon and possessing a firearm while under the age of eighteen. *JL*, *supra* at 268-269.

⁴ Defendant does not dispute that the officers were responding to a reported domestic disturbance. However, defendant argues that because this testimony was elicited at the preliminary examination and not at the suppression hearing, this fact was not before the trial court, and it would be a violation of defendant's right of confrontation for this Court to consider it. Defendant cites no authority for this proposition. An appellant may not merely assert a position and leave it to this Court to discover and rationalize the basis for his claim. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Further, defendant notes that factual circumstances elicited in the officer's preliminary examination testimony should not be considered because the prosecutor did not accept defense counsel's offer to stipulate to the facts in the preliminary examination transcript. However, our review of the suppression hearing record indicates that it was the trial court's decision to take testimony, not the prosecutor's decision. Regardless, the additional facts are not dispositive and would not change our analysis or the result.

people coming out of the house. He was in fear of his safety and, according to procedure, with a report of a shot being fired in the residence, he ordered defendant to place his hands on the wall. Defendant did not immediately obey the order. Because of the lighting and the circumstances, the officer immediately patted defendant down for safety reasons and found the gun.

Considering the totality of all the facts and circumstances, as understood and interpreted by law enforcement officers, and applying common sense, the brief detention of defendant and the patdown was reasonable. *Oliver, supra* at 192; *Lewis, supra* at 70. The intrusion was reasonably related in scope to the circumstances that justified the interference. *Champion, supra* at 98.

Defendant contends that the report of the domestic disturbance and a possible gun shot fired should be treated as an anonymous tip because there is no evidence that the radio dispatch was based on a 911 or an emergency call, that it was recorded, or that the call could be traced. We do not find these facts dispositive. There is no dispute that the officers were responding to a police radio dispatch, rather than merely acting on a tip from an informant. Officer Dye testified that he did not know the source of the information in the dispatch, who called the police or when, but he also testified that it is not normal procedure for dispatch to tell the officers who called or when the call came in. Because a court must view the circumstances as understood and interpreted by law enforcement officers, *Lewis, supra* at 70, we do not find the nature of the call to the police determinative on the facts of this case.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Kirsten F. Kelly